

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 40 of 2002

In the matter of
Petition filed by M/s RHT Consutructions, Dhule under Section 29(1)(c) and (d) of
the ERC Act, 1998 regarding consumer's options for ORC Scheme.

Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member

ORDER

Dated: March 24, 2003

Shri T.K. Agarwal of RHT Constructions, At Post Shirpur, Tal & District Dhule has submitted an application dated 17.12.2002 seeking that the Commission direct the Respondent Board (MSEB), in exercise of its powers *under Sec. 29 and Sec. 22(1) (c) & [d] of the ERC Act, not to compel either the builder or his individual customers or group of customers to opt for ORC Scheme, and to provide quotation and electricity connection to individual customers as and when they submit the application form, without unreasonable delay, and without waiting for the applications of all the customers in that building.* He has also sought "*all other reliefs in favour of the petitioner which are necessary for the effective adjudication of this petition*".

2. Hearing for admission was held on 20th February 2003. Shri S.C. Karandikar, Counsel for the Petitioner, submitted that his client is a builder who has completed two constructions, viz. Ramdevi Complex and Balaji Complex, with 147 tenements. Counsel submitted that the petition relates to the procedures adopted and charges applied to new connections, particularly for apartments and commercial complexes. He has constructed the buildings for sale and, as per the conditions of sale of the premises, the individual buyers are required to apply for the electricity connection to MSEB, although the Petitioner would extend all possible help to them. However, MSEB have issued a common quotation dated 4.1.2002 to the Petitioner for payment of Rs.7,10,854/- as Service Line Charges (SLC) for creating the infrastructure required such as sub-station, cabling from the transformer to the individual metering points, etc. Counsel pointed out that, apart from the above, MSEB would be recovering SLC charges from the individual consumers.

3. Counsel for the Petitioner cited Section 18(a) of the Electricity (Supply) Act, 1948, which provides that “*subject to the provisions of this Act, the Board shall be charged with the following general duties, namely ... in the most efficient and economical manner with particular reference to those areas which are not for the time being supplied or adequately supplied with electricity.*” Therefore, a statutory duty has been cast upon MSEB to provide electricity by creating appropriate infrastructure such as generating stations, transmission & distribution lines, etc. MSEB have also earmarked budgetary allocations for such activities in their tariff proposal before the Commission. He referred to page 58 of Vol-I of the tariff proposal, which shows that a provision of Rs.1,624.31 crore has been earmarked for addition of assets, which includes Rs.700 crore for distribution. Therefore, MSEB should not demand from consumers any amount for further infrastructure development since it is taken care of through the tariff. In addition, MSEB collects fixed Service Connection Charges for release of individual connections over and above SLC charges for strengthening or providing infrastructure. Thus, MSEB obtains funds for the same infrastructure through budgetary provisions reflected in tariff proposals, from the builder or developer, and also from individual customers. Counsel submitted that the Petitioner is not against MSEB recovering the amount required for infrastructure, but objects to the manner in which it is collected through different types of charges and accounting heads for the same work.

4. Counsel for the Petitioner also pointed out that, after persistent efforts to obtain clarification or furnish a copy of the circulars / guidelines on the basis of which the charges were quoted, MSEB issued a fresh quotation on 2.12.2002 for a reduced amount of Rs.4,80,000/-, which indicates the arbitrary manner in which MSEB is levying such charges.

5. Counsel for the Petitioner argued that the Commission is empowered to act on the present petition under Section 22(1)(a) & (b), Section 29 of the ERC Act, 1998. He also referred to Regulation 72(2) of the MERC (Conduct of Business) Regulations, 1999, which states that “*No utility shall fix any tariff for intra-State transmission, distribution or supply of electricity and terms and conditions for the supply of electricity, without the general or specific approval of the Commission.*” He submitted that in view of Commission’s Order in Cases 10 and 11 of 2000 (applications of (i) Maharashtra Chamber of Commerce & Industries, Mumbai, and (ii) Akhil Bharatiya Grahak Panchayat, Pune) in the matter of Commercial Circulars and the Clauses of Conditions and Misc. Charges for supply of electrical energy issued by MSEB without prior approval of the Commission, the latter has jurisdiction and may admit the petition.

6. Counsel for the Petitioner clarified that since the project site falls within the Shirpur Gram Panchayat area, Commencement Certificate and other such requirements are not applicable as would be the case in Municipal areas.

7. Shri S.K. Sen, Counsel for the Respondent (MSEB) submitted that the issue does not relate to the procurement process, nor does it fall within the scope of Section 22(1)(c) or (d) of the ERC Act. Since this is essentially a matter between the purchasers of the premises and the builder, the Commission is not the appropriate forum for such dispute resolution. The Petitioner has a commercial interest which is in conflict with that of the prospective buyers of the premises. Moreover the Petitioner is asking MSEB to collect the appropriate amounts from his customers, who are not represented at the hearing as parties. Therefore, on this ground itself, the Petition has no merit and should be rejected.

8. MSEB's Counsel drew attention to the Petitioner's written submission that "*various prospective customers have contacted the petitioner and have principally agreed to purchase the same but the transactions have not materialized for want of availability of electricity connections.*" Counsel stated that there has been no compulsion on the builder to pay, but that he is not assuming his consequential responsibility after applying for connections. He submitted that the Petitioner was fully aware of the total load requirement while preparing the building plans and seeking approval from the Gram Panchayat. He initially asked for a 200 kVA transformer, and subsequently revised it to 100-kVA stating that the load can be upgraded at a later stage as and when it increases. Counsel also pointed out that the Petitioner, vide letter dated June 27, 2001, has given a written undertaking to pay the required charges. However, Counsel admitted that due to these changes and other administrative difficulties and procedures relating to the sanction of material, etc., the matter had been delayed considerably.

9. Counsel for MSEB submitted further that the SLC matters are a part of the Terms and Conditions of Supply regarding which matters are pending before the High Court, and a judgement is expected shortly. Hence it would not be appropriate at this stage to hear the matter, being subjudice.

10. In reply, Counsel for the Petitioner submitted that, pending the High Court's decision in the SLC matters, the Commission may admit the petition considering the Commission's jurisdiction, and the case would thereafter take its own course based on the High Court orders.

11. The Commission observed that since the present application arises out of a dispute between the builder and the prospective purchasers of the premises, it does not fall within the scope of the ERC Act, 1998, and has no merit. However, if the Petitioner desires to petition the Commission on the SLC matters after pronouncement of the judgement of the High Court, he may do so at the appropriate time, and such petition would be dealt with separately. The Commission, therefore, does not see any merit on the prayer of the Petitioner and disposes of it accordingly.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

(A.M. Khan)
Secretary, MERC

Bombay, March 24, 2003